

Appl. No. 10/827,478
Amendment dated 06/10/2008
Reply to Office Action of 03/10/2008

Remarks

Claim 1 has been amended to limit the organopolysiloxanes to the polydiorganosiloxanes of original claim 3, where the R¹ hydrocarbyl group is present on a terminal siloxy unit (that is, an R¹Me₂SiO_{3/2} unit).

Claim 3 has been canceled accordingly.

Double Patenting

Claims 1-7, 9, 11, and 12 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of co-pending Application No. 10/827,478.

Applicant submits in response a terminal disclaimer to overcome the double patenting rejection.

Claim Rejections - 35 U.S.C. 112

Claims 1-7, 9, 11, and 12 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The rejection asserts "at least one...household care ingredient" limitations lack written description of what chemicals or chemical structures that applicant had possession of at the time of invention.

Applicant respectfully traverses this rejection, and the statements made in the last paragraph on page 4 of the 3-10-08 office action, as shown below.

10 These terms lack sufficient description in the specification and no evidence indicates which household care ingredients were known to the applicant. Therefore, the fact pattern indicates that Applicant was not in possession of the claimed compositions. In the absence of understanding the active ingredients, the artisan would have accepted that applicant was not in possession of the claimed invention.

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Applicant respectfully submits paragraphs [0010], [0023], [0024], of the written description provides sufficient details and teaching such that one skilled in the art is able to make and use the claimed invention. The cited paragraphs list solvents, surfactants, enzymes, optical brighteners, fabric softeners, as some of the selected choices for household care ingredients. Applicant believes one skilled in the art, upon reading the written description, would be able to select specific household care ingredients, as needed to provide a household care formulation utilizing the claimed hydrocarbyl functional organopolysiloxanes. Furthermore, paragraph [0020] describes certain benefits derived from the claimed hydrocarbyl functional, which would further allow one skilled in the art to select household care ingredients as needed to accomplish formulation objectives. As further evidence that Applicant was in possession of the claimed invention regarding household care ingredients, Example 3 in the specification describes a fabric softener as a representative household care product formulation.

Applicant requests reconsideration of the USC 112 1st paragraph rejection and respectfully submits the present written description provides sufficient support to allow one skilled in the art to make and use the claimed invention.

Claim Rejections - 35 U.S.C. 103

Claims 1-7, 9, 11 and 12 were rejected under 35 USC 103(a) as being unpatentable over ROBINSON et al. (WO 02/03952, 17 January 2002) in view of BOLICH, JR. et al. (US 5965115).

Applicant respectfully submits that the claims as amended define an invention which is unobvious over ROBINSON in view of BOLICH. Applicant believes that ROBINSON, or ROBINSON in view of BOLICH, fails to teach or suggest the presently claimed hydrocarbyl organopolysiloxanes.

ROBINSON teaches compositions containing a skin care active in a delivery system comprised of a tacky solvent, a silicone elastomer, and a carrier. The delivery systems of ROBINSON may be a water in silicone emulsion. In such systems, ROBINSON

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provides specific teaching for its selection of suitable emulsifiers to prepare these systems. In particular, silicone emulsifiers are described, with dimethicone copolymers described in detail by the structural formula on page 2;7, lines 3-17 (as noted in the 3-10-08 office action on page 6). Applicant submits this structural formula of ROBINSON requires the R² group (i.e. the polyalkylene glycol or ether groups) reside on a disiloxyl unit (that is a (CH₃)R²SiO₂/2 unit in Robinson). Applicant has amended claim 1 to hydrocarbyl functional organopolysiloxanes where the hydrocarbyl groups reside on a monosiloxyl unit (that is an R₂R¹SiO₃/2 or RR¹SiO₃/2 siloxy unit). Therefore, Applicant respectfully submits the presently defined hydrocarbyl organopolysiloxanes do not overlap with the dimethicone copolyols of ROBINSON.

Applicant further traverses the statements made in paragraph 15 on page 17 of the 3-10-08 office action, as shown below.

15. While ROBINSON et al. does not define each and every polydiorganosiloxane listed in instant claim 3, one skilled in the art would have been motivated to use a variety of organopolysiloxanes available on the market. ROBINSON et al. indicate a number of organopolysiloxanes by commercial name, which would lead one skilled in the art to investigate further materials.

ROBINSON requires its selection of dimethicone copolymers to function as an emulsifier. As such, these emulsifiers have multiple alkylene oxide units (often high molecular weight copolymer segments of ethylene or propylene oxide). Indeed, ROBINSON teaches the silicone emulsifiers to contain multiple units of ethylene oxide or propylene oxide, as described at the bottom of page 26 of ROBINSON.

Silicone emulsifiers are preferred. A wide variety of silicone emulsifiers are useful herein. These silicone emulsifiers are typically organically modified organopolysiloxanes, also known to those skilled in the art as silicone surfactants. Useful silicone emulsifiers include dimethicone copolyols. These materials are polydimethyl siloxanes which have been modified to include polyether side chains such as polyethylene oxide chains, polypropylene oxide chains, mixtures of these chains, and polyether chains containing moieties derived from both ethylene oxide and propylene oxide. Other examples include alkyl-modified dimethicone copolyols, i.e., compounds

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Further evidence that ROBINSON requires multiple alkylene oxide units is shown by its listing of commercial products, all of which contain polyether chains having multiple ethylene or propylene oxide units.

In contrast, the presently claimed hydrocarbyl functional organopolysiloxanes can not be considered as a "polyether", as the hydrocarbyl group as claimed does not contain more than two alkylene oxide units. Applicant respectfully submits that ROBINSON actually teaches away from the presently claimed hydrocarbyl organopolysiloxanes since it teaches polyether components (more than two alkylene oxide units) that must provide emulsifying capabilities. Thus ROBINSON listing of commercial products containing polyether groups, and the requirement the selection be an emulsifier, would not lead one skilled in the art to investigate the hydrocarbyl functional organopolysiloxanes as presently claimed.

Applicant requests that previously withdrawn claims 12 and 13 be rejoined in accordance with 37 CFR 1.104 after prosecution of pending claims. Applicant respectfully submits withdrawn claim 12 and 13 contain all the limitations of the product claims and therefore considered proper for rejoinder.

In view of the above, it is respectfully submitted that the claims are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of claims at an early date is solicited.

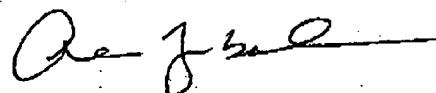
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The present response is being submitted within the three-month shortened statutory period for response to the outstanding Office Action. Applicant authorizes the USPTO to charge deposit account 04-1520 for any fees that should be necessary to maintain the pendency of the application.

In view of the above, it is respectfully submitted that the claims are in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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